

Ground and Flight Risk

DFARS 252.228-7001

Developed by:

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Introduction

The purpose of this presentation is to assist the ACO who has a contract containing the Ground and Flight Risk Clause. It is important to understand the vital role of the Government Flight Representative and the Aviation Program Team. They are important members of the total multi-functional team responsible for ensuring contractor compliance of contract terms and conditions.

References

- ✈ ONE Book Chapter 8, Flight Operations
- ✈ Government Flight Representative Pre-Course Study Unit (DCMC-AF)
- ✈ DFARS 252.228-7001

Ground and Flight Risk Clause

- ✈ DLAI 8210.1 Flight Operations and Flight
Safety Manual

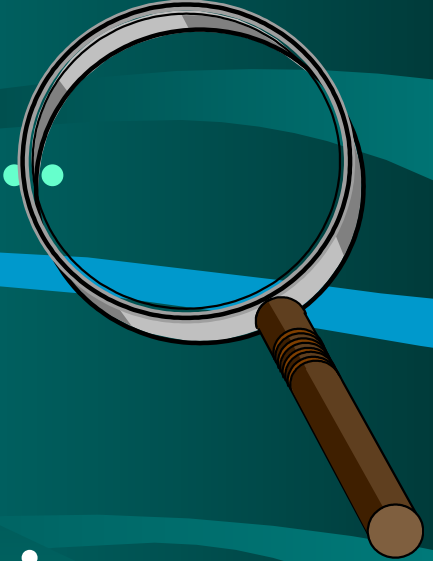
DFARS 252.228-7001

- “... the Government assumes the risk of damage to, or loss or destruction of aircraft in the open, during operation, and in flight.”

ACRONYMS

- * AMM - Aviation Maintenance Manager
- * APT - Aviation Program Team
- * CFO - Chief Of Flight Operations
- * FOD - Foreign Object Damage
- * GFR - Government Flight Representative
- * SSM - Specialized Safety Manager

DCMC Policy ...



Contractors performing flight or ground operations for which the government has assumed the risk of loss shall have *sufficient* CAO oversight to limit or prevent mishaps.

How is “sufficient” determined?

- ✱ **A performance based assessment shall be performed to quantify level of risk at a particular contractor’s facility.**
- ✱ **Assessment results and other Flight Operations data may be used to determine extent of oversight needed.**
- ✱ **Experienced personnel shall be assigned to carry out DCMC Flight Operations Program and provide oversight.**

Some definitions ...

Flight Operations -

- * Program designed to manage contractor and military aviation related operations under DCMC surveillance.**
- * Establishes the process for command and control of flight operations resources.**
- * Prescribes guidelines for managing flying unit activities.**

GFR

Government Flight Representative (GFR) - a rated military officer from one of the Military Services or a Government civilian in aviation service to whom authority has been delegated for ...

GFR is responsible for the approval of...

-
- * Contractor Flights
- * Contractor Procedures
- * Flight crew member/personnel
- * some ground personnel

and

ensuring contractor compliance with the terms and conditions of the contract(s) as it relates to flight or ground operations.

Aviation Maintenance Manager AMM

- * Assists the GFR on contracts involving aircraft
- * Ensures contractor compliance with Service Directives and DLA regulations
- * Performs scheduled/unscheduled inspections and oversights to ensure contractor compliance of its FOD *(foreign object damage)* program

Specialized Safety Manager

SSM

- * Monitors safety practices throughout the contractor's plant (performs periodic surveys)
- * Oversees contractor's corrective action on safety violations
- * Notifies the GFR of apparent hazardous operations

Aviation Program Team (APT)

Core Members

- * **GFR is the Team Leader**
- * **Aviation Maintenance Manager (AMM)**
- * **Specialized Safety Manager (SSM)**
- * ***Matrix Support:***
 - ACO**
 - QAR**
 - Program Integrator (PI)**
 - Property Administrator**

APT members contribute to:

- * day to day surveillance
- * surveys of contractor flight and ground operations
- * meetings before and after a survey
- * liaison with the program office

The APT will interact with ...

- * Procuring Contracting Officer
- * Administrative Contracting Officer
- * Terminating Contracting Officer (if applicable)
- * Chief, Flight Operations
- * Program Integrator
- * Quality Assurance Representative
- * Property Administrator
- * Contractor Personnel

For the ACO ...

“The GFR and the APT are the on-site eyes and ears for the government. They make critical decisions about the safety and effectiveness of each contractor flight or ground operation. This assures that aircraft are maintained and operated by contractors in accordance with contract requirements ...” One Book, Chapter 8

Who does What and When ...?

Prior to Contract Award the GFR and AMM

- * Participate in the pre-award
- * Must ensure that the Contracting Officer has current version of appropriate regulations.
- * Shall inform the contractor that approved procedures must be in place before arrival of first aircraft.

After contract award ...

The ACO upon receiving a contract with the Ground and Flight Risk Clause (DFARS 252.228.7001) or Flight Risk Clause

(DFARS 252.228.7002) shall

- * Inform the CAO commander through the team leader of the requirement.**

The CAO Commander ...

“...has the responsibility, authority and accountability over day- to- day operations of each aviation program.”

** shall inform the District CFO of the new contract and need to appoint a GFR/APT.*

** And determine if a resident/non resident is required*

Who issues the delegation?

A letter of delegation is necessary when the contract involves Government aircraft and other aircraft for which the Government assumes at least some of the risk.

The *CAO Commander* or designee of a Military Service issues a letter of delegation to the designated person.

The cover letter with the delegation

Provides:

- * A place for the GFR's initials and the date
- * Signature block acknowledging the responsibilities and duties
- * And a place for the **ACO** of that facility to initial and date

Also ...

The CAO Commander shall :
Select and appoint an APT to perform
surveillance and ground activities
and

The CAO Commander and the CFO
shall determine if there is a
requirement for a military crew to
conduct flight operations.

The GFR and APT shall

...

- * Review the contract (as stated in ONE Book Chapter 3.2 CRRP multi-functional review)
- * Forward a DD Form 1716 Contract Deficiency Record if deficiencies are found
- * Participate in the PAOC
- * Determine level of surveillance necessary

The Safety Specialist shall ...

- * Know the status of all contractor facilities, equipment, personnel and programs regarding flight and ground operations.**
- * Survey the contractor's facilities, safety and environmental staff, and fire department for adequacy and contract compliance.**
- * Participate in periodic Performance Based Assessments and process reviews as the safety functional expert and advisor to the GFR.**

The AMM shall ...

- * Know the status of all contractor facilities, equipment, personnel, training and certification, technical data and procedures involving ground operations and FOD/Tool control programs.**
- * Participate in periodic Performance Based Assessments and process reviews as the maintenance functional expert.**
- * Conduct ongoing surveillance of contractor ground operations, process and programs.**

Some Tips for the ACO

...

- * Upon completion of the GFR/APT survey, the GFR shall turn in a Performance Based Assessment Team survey report to the ACO.
- * The ACO will forward a copy to the contractor and the PCO.

Suggestions for the ACO

- * Send a cover letter to the contractor along with the survey results pointing out the areas of deficiency, if any, and suspending a response based on the severity of the deficiencies and copy the GFR.

Please note that there is no requirement in the ONE Book for a cover letter going to the contractor or to the GFR.. It is a good business practice.

Contractor's Response

...

- * Upon receipt of the contractor's response stating corrective action taken or the intent to correct, a copy should be forwarded to the GFR.
- * This allows the GFR to follow-up to ensure corrective action has been taken by the contractor.

As Time Goes By

- * Frequent communication with the APT is recommended for the ACO with an aircraft contract containing the Ground and Flight Risk Clause.
- * The APT is a vital tool to ensure safety of the aircraft, prevention of mishaps through approved procedures and on-going surveillance.

The Ground and Flight Risk Clause

DFARS 252.228-7001

* As prescribed in 228.370(b) use the 252.228.7001 Ground and Flight Risk Clause, in negotiated fixed price contracts for aircraft production, modification, maintenance, repair , or overhaul

DFARS 252.228-7001(6)

(b)

“ ... the Government assumes the risk of damage to, or loss or destruction of aircraft in the open, during operation, and in flight. The Contractor shall not be liable to the Government for such damage, *loss, or destruction.*”

DFARS 252.228-7001(6)

(e)

“With the exception of damage, loss, or destruction in flight, the Contractor assumes the risk and shall be responsible for the first \$25,000 of loss or damage to aircraft in the open during operation resulting from each separate event In the event the Government does not elect repair or replacement, the Contractor agrees to credit the contract or pay the Government \$25,000 (or the amount of the loss) as directed by the Contracting Officer.”

Ground and Flight Risk Issues

References

**DFARS 228.370(b) - include 252.228.7001,
Ground and Flight Risk in all Fixed Priced
contracts involving aircraft**

**DFARS 228.370 - included 252.228-7002,
Aircraft flight risk in all cost type
contracts involving aircraft**

**DLAI 8210.1 - Contractor's Flight and
Ground Operations, "The Tri-Service
Regulation"**

Why?

- * **Government as a self-insurer**
- * **Clauses are designed to define and apportion risk**
- * **Clauses provide tools for Government to manage risk it has accepted**

Defining Risk

252.228-7001

- ✱ Aircraft - ... to include complete aircraft and aircraft in the process of being manufactured, disassembled or reassembled
- ✱ In the Open - located wholly outside of buildings on the Contractor's premises ...(see DFARS clause (5))
- ✱ During Operation - operations and tests of the aircraft, and its' installed equipment, accessories, and power plants, while the aircraft is in the open or in motion.
- ✱ In Flight - any flight demonstration, flight test, taxi test, or other flight made in the performance of this contract ...

Risk Management

- ✱ Approval of Flight Crew Members - the pilot, the co-pilot, and unless provided in the Schedule, the flight engineer, navigator and bombardier-navigator ...
- ✱ Withdrawal of Government's Assumption of Risk - if the Contracting Officer finds that the aircraft is in the open under unreasonable conditions, and the Contractor fails to take prompt corrective action.

Risk Management cont.

- * Contractor's reporting obligation in the event of loss - in the event of damage, loss, or destruction of aircraft in the open, during operation or in flight ... the contractor shall furnish to the Contracting Officer a statement of damage, loss or destroyed aircraft, time, and origin, etc.**

Exclusions

- * **Risk is covered by insurance**
- * **Occurs in the course of ground transportation**
- * **Flight crew members not approved by the CO**
- * **Normal wear and tear**
- * **Workmanship damage**
- * **Willful misconduct or lack of good faith by contractor management**

Deductible

- * **First \$25,000 of damage** - section (e) of the clause describes the contractor's responsibility for the first \$25,000 of loss-*the deductible was raised from \$1,000 in contracts signed after October, 1996.*
- * **For *each* incident** - separately occurring (i.e. three aircraft damaged in the same storm)

Withdrawal of the Government's Assumption of Risk

- * Recommendation from the GFR *and*
- * Written notice to contractor management of unreasonable condition(s) *when*
- * Failure to meet demand for corrective action within a reasonable period of time *and/or*
- * Failure to correct resulting in notice to contractor of Government's assumption of risk is being terminated *will result in*
- * Termination of risk effective 15 days from the date of notice to contractor

Aircraft Flight Risk

DFARS 252.228-7002

“The Flight Risk Clause from a liability stand point, only applies while the aircraft is in flight. Like the Ground Flight Risk Clause, the FRC mitigates the Government’s risk to property (specifically the aircraft) during ground operations because it calls for contractor compliance with DLAI 8210.1 which applies to both ground and flight operations”

see note page

Aircraft Flight Risk continued ...

- * Contractor not relieved of liability unless flight crew members approved in writing by the commanding officer
- * If damage occurs during flight exceeds either \$100K or 20% of contract price, the contractor receives an equitable adjustment

Aircraft Flight Risk cont.

- * Adjustment is to estimated cost, delivery schedule, and the amount of fee to be paid the contractor
- * Consideration given to contractor fault in determination of fee adjustment

Resources

* Leigh Owens, Office of Council, DCMC Atlanta, 770 590-6264, was a major contributor for this briefing.

